

as precedent.

In support of this motion, Plaintiffs aver as follows:

1. At page 13, the Memorandum and Order states "... during the November 22, 2010 hearing Chase's counsel, Michael Agoglia, insisted, without objection by opposing counsel, that Licata's November payment was late."
2. In connection with the filings on the Motion for Preliminary Injunction, Chase's assertion on this issue was contested in the Second Declaration of Jean Licata at ¶ 6 ("Second Licata Decl.") (Doc. No. 43-3), in which she avers under penalty of perjury that she made her November payment on October 30, 2009. A copy of the money order transmitting that timely payment is attached as Exhibit 1 to the Second Licata Declaration. See also Reply in Support of Plaintiffs' Motion for "Provisional" Class Certification at pp. 15-16 (Doc. No. 43) (discussing the parties' factual dispute on this point). In addition, it bears noting that Ms. Licata was always "current" on her trial payments under HAMP rules. "Current in this context is defined as the borrower having made all required trial period payments no later than 30 days from the date the final payment is due." See Supplemental Directive 09-01, attached as Exhibit 2 to Plaintiffs' First Amended Complaint at 17 [Docket No. 4-2].
3. In light of time constraints, counsel did not have an opportunity for rebuttal argument in connection with the Motion for Preliminary Injunction and therefore did not have the opportunity to point out to the Court the parties' factual dispute or to cite to Ms. Licata's supporting declaration.
4. In addition, at page 15, the Memorandum and Order states that "Ms. Licata has neither alleged to have attempted payment nor placed the payments in escrow..."
5. Ms. Licata's strenuous efforts to determine the amount of her obligations to Chase in order to make payments required by Chase are detailed in her initial declaration at ¶¶ 13-15 ("First Licata Decl.") ("Doc. No. 22") and in the Second Licata Declaration at ¶¶ 10-11. Plaintiffs' position on this issue is that Ms. Licata could not make payments absent some indication from Chase concerning how much she was required to pay following completion of her TPP payments. In light of Chase's silence, Ms. Licata, an unsophisticated consumer, was understandably confused about her obligations. She is nevertheless ready willing and able to resume payments at this time. Second Licata Decl. at ¶ 14.
6. Correction of the record sufficient to acknowledge that these issues have been in dispute may be necessary to preserve Ms. Licata's claims on these issues as the litigation progresses.
7. In addition, in two instances the Memorandum and Order suggests that Plaintiffs were seeking a nationwide injunction. To the contrary, Plaintiffs' Motion was

limited to a narrow group of Chase's Massachusetts customers. ("Doc. No. 18"). See also Doc. No. 20 (Plaintiffs' definition of the class to which the proposed injunctive relief would apply). Chase estimates the affected group to include approximately 1,845 Massachusetts borrowers. *See* Declaration of Karen Shine [Docket No. 35] at ¶ 4.

8. Plaintiffs seek correction on this issue, because the scope of the denied injunction may be relevant in other similar cases across the country in which other homeowners may seek statewide relief.

Wherefore, Plaintiffs request an Order correcting the record in this matter in order to avoid potential injustice.

Dated: December 2, 2010

Respectfully submitted
On behalf of Plaintiffs,

/s/ Gary Klein

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) and paper copies will be sent to those indicated as non-registered participants on December 2, 2010.

/s/ Gary Klein
Gary Klein

Local Rule 7.1(A)(2) Certificate

I, Gary Klein, hereby certify pursuant to Local Rule 7.1(A)(2) that Plaintiffs' counsel consulted with counsel for Defendant before filing the foregoing motion. Defendant intends to file a response to this motion.

/s/ Gary Klein
Gary Klein